

6/1/08

File 8599

402-407-1M

CONTENTS.

Harris

County

SCHOOL LAND.

For Rejection See over

SOLD TO

See Mineral Title No 811-812
162 9-8-08

Refused HCO
Acres.
in the opening of atty General
Survey No. 4.2

Block No. 11-16-08

Surveyed for

F. J. DeMei
Houston

ACT APRIL 15, 1905.

See Opinion Atty Genl.
8/6/1908
See endorsement on field notes
August 8/1908
D. W. Decker

Mgl. over

1/2 in 16

1. Application to Surveyor.

6/12/08

2. Field Notes.

1/2 Sec sketch J. W. Decker

3. Application to Purchase.

4. Treasurer's Receipt.

5 Atty's Brief 6/25/08

6 Atty General's opinion Terrell

Rejected because application is
insufficient and attorney General
advises submerged land not subject
to sale, otherwise correct.
John J. Terrell
Comm 8/8/08

CONTENTS

1. Application to Surveyor
2. Field Notes
3. Application to Purchase

SF
File 8599Harris County**SCHOOL LAND**P-11
11-16-08
162 ✓ AcresSurvey No. 42

Block No. _____

Surveyed for

F. J. De Meritt

ACT APRIL 15, 1905

Rejected
old wrapper within

Application for Survey

APPLICATION No. 42

To Geo F Norton County Surveyor of Harris
 County, Texas, or to _____ District Surveyor of
 _____ Land District:

By virtue of Section 8 of an Act approved April 15, 1905, and Act May 16, 1907, I hereby apply for a survey of the following described unsurveyed land appropriated to the Public Free School Fund under Chapter 11, Act February 23, 1900, to-wit: under article 3490- of the Statutes of 1895

Situated in Harris County, Texas, about 30 miles from the County site. Said tract is bounded as follows:

The body of land lying between the northern part of the Scott League #65 and South of the the Scott labor being a part of San Jacinto Bay.

I solemnly swear that I desire said land surveyed with the intention of buying it, and that I am not acting in collusion with, or attempting to acquire said land for another person or corporation.

(N. B.—Write Name and P. O. Address Distinctly.)

W. G. Duster Applicant.
Houston P. O. Texas.

Subscribed and sworn to before me, this 6 day of June, 1908

(SEAL MUST NOT BE OMITTED.)

W. G. Duster
 notary Public Harris Co. Texas.

I E. P. Perkinson County Surveyor of Harris County, Texas, or Surveyor for _____ Land District, hereby certify that the above and foregoing application No. 42 was filed for record on the 6th day of June, 1908, at 8 o'clock A.M., and recorded in Vol. 6, page 91, in my office Houston, Texas.

E. P. Perkinson
 Dep. Co. Surveyor Harris Co. Texas.

LAND OFFICE

S. F. No. 8599

Application for Survey

Filed June 12 1908

John J. Turner
Commissioner.

W. L. Chapman
Clerk.

Plat of Survey No.

The State of Texas,

Survey

Harris

County,

No. 42

or

District.

Blk.

FIELD NOTES of a survey of ¹⁶²~~160~~ Acresacres of land made for E. J. DemarrittVariation 8 o 30

by virtue of his affidavit and application made

before V. G. Dustin, Notary Public, Harris County on the sixth dayof June 1908, and filed with the Surveyor of Harris County County or Land District,on the 6th day of June 1908, under Section 8 of an Act approved April 15, 1905, and amendmentAct May 16, 1907, ~~providing for the sale of the unsurveyed school land appropriated to the Public Free School Fund by~~
under Article 3490 of the Statutes of 1895.~~an Act approved February 29, 1900.~~ Said land is situated in Harris County, about 50.23miles ⁸⁰~~S. E.~~ from county site, and known as survey No 42, in Block No., beginning atBeginning at a point 60 ft. South of the S. W. Corner of the Wm. ScottSurvey No. 65. At this place I set a stone monument and a Cedar Post for1st. Corner S. 89 o 30 ' E. 134.64 var. from an Iron Monument marked U.S.Thence S. 15 o 30 ' W. 487.26 vrs.

E.D.

Thence N. 74 o 30 ' W. 606.96 var.Thence N. 15 o 30 ' E. 487.26 var. to 2nd Cor. a stone monument and a CedarPost which I set 60 ft East of the S. E. Corner of Wm. Scott Survey No. 66Thence with the meanders of the Wm. Scott No. 66 and 60 ft. E. of the shoreline as follows, N. 19 o 20 ' E. 224.84 var. ; N. 18 o W. 130.8 var. N. 37 o45 ' W. 707.76 var. , N. 162 var to 3rd. Corner a stone monument and CedarPost. Thence S. 60 ' of the shore line of the Wm. Scott Survey No. 67 asfollows: South 53 o 45 ' E. 219.6 var. S. 74 o 45 ' E. 716.4 var. to a pointS. 60 ' distant from the dividing line of the Wm. Scott No. 67 and Wm. ScottNo. 65. Thence S. 14 o 15 ' East 326.16 var. to the 4th. Corner a stone monu-ment and a Cedar Post 60 ' S. of Wrights Landing. Thence S. 70 o E. 190.08 varThence S. 63 o W. 159.48 var. Thence S. 455.04 var. to the 1st. Corner thepoint of the beginning, containing 160 Acres, which is a very shallow partof the Galveston Bay.

to the place of beginning.

Bearings marked

Surveyed June 6th. 1908J. Gannenbaum
S. T. Palmer

Chain Carriers.

I, Surveyor of, Texas,

do hereby certify that the foregoing survey was made by me on the ground, and according to law; that the limits, bound-
aries and corners, with the marks, natural and artificial, are truly described in the foregoing Plat and Field Notes, just
as I found them on the ground; and they are recorded in my office in Book, page

This day of 190.....

Surveyor of Texas.

I, E. Peperkorn
Surveyor of Harris County,
do solemnly swear that the classification and market
value of the land included within the limits of the
within field notes is as follows, viz.:

Sandy Loam Soil
State Character.

Agricultural, market value Nothing
Dry or Watered

Grazing, market value Nothing
Dry or Watered

Kind of Timber No.

Market Value of Timber None

Overflow Yes. Swamp No.

Suitable for Settlement No. it being
part of the Galveston Bay.

E. Peperkorn
Sworn to and subscribed before me this the 10th

day of June 1908.

V. G. Duster
notary Public Harris Co. Tex.

Within enclosure of

Improvements owned by

P. O. address of owner of enclosure or improvements is

Surveyor.

RECEIVED AS STATED

\$ 100

JUN 13 1908

GEO. W. BEAVER
RECEIVER

cp 162 H.
June 22
1908

LAND OFFICE

S. F. No. 8599

FIELD NOTES

Filed June 12 1908

John J. Terrell
Commissioner
W. D. Coleman
Clerk

Approved _____ 1908

Commissioner

According to the official map
of Harris County and U. S.
coast and geodetic survey chart,
this is entirely in San Jacinto Bay
waters of Galveston Bay on the
Gulf of Mexico within tide
water limits, otherwise the
field notes are correct.
August 8/1908
O. von Rosenberg

I E. Peperkorn, Deputy Surveyor of Houston, Texas Harris Co. Texas,
do hereby certify that the foregoing survey was made by me on the ground, and according to law; that the limits, bound-
aries and corners, with the marks, natural and artificial, are truly described in the foregoing Plat and Field Notes, just
as I found them on the ground.

This 6th day of June 1908.

E. Peperkorn

Deputy Surveyor of Harris Co. Texas.

I Geo. F. Horton, Surveyor of Harris Co. Texas,

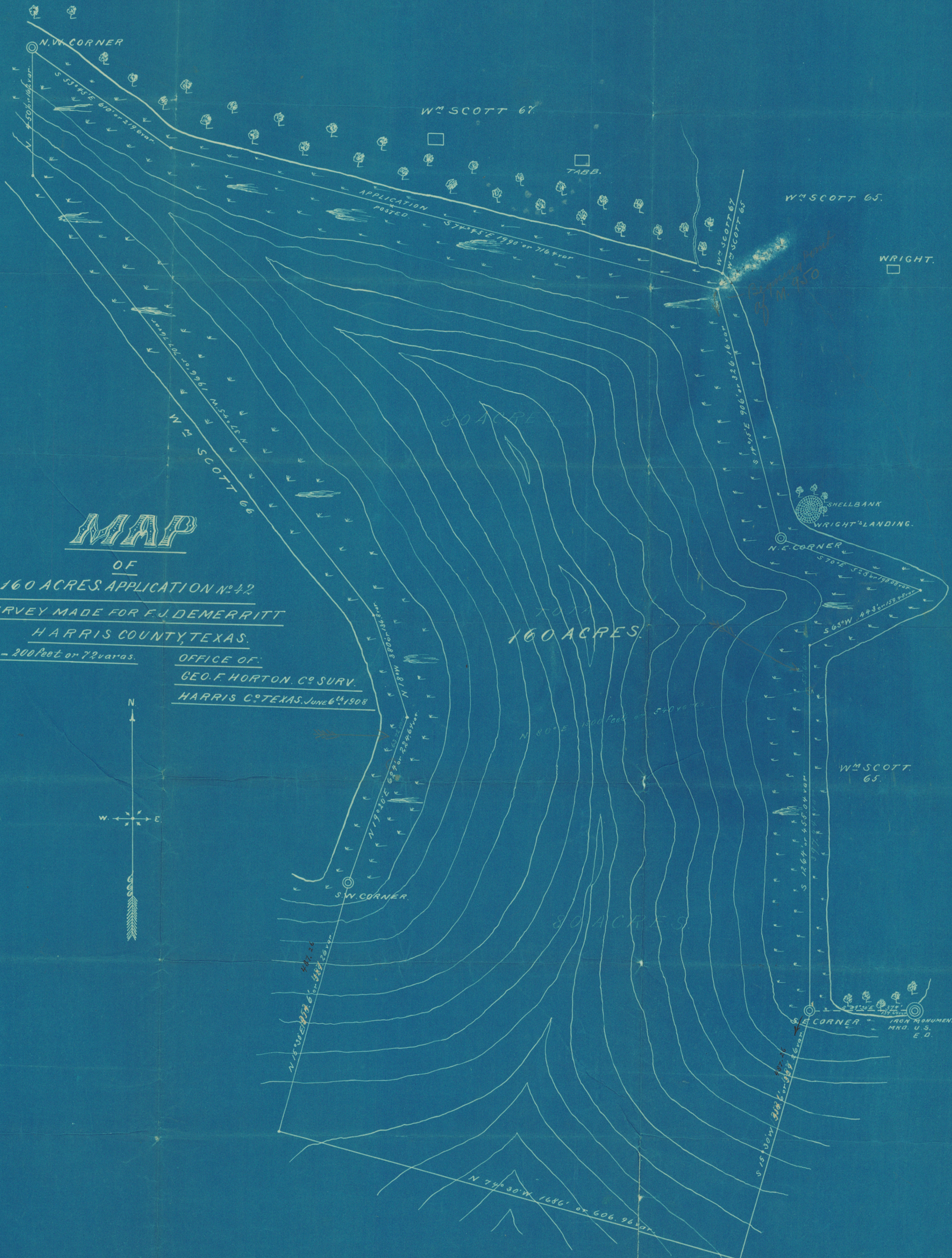
do hereby certify that I have examined the foregoing Plat and Field Notes and find them correct, and that they were
made on the ground as stated in the above certificate, and that they are recorded in my office in Book F., page
354.

This 6th day of June 1908.

Geo. F. Horton

Surveyor of Harris Co. Texas.

8599
Harris County.
School Land.
F. J. Demmitt
Surveyor & Clerk
Filed June 12, 1908
J. H. J. Demmitt
Comm'r.
W. L. Coleman
Clerk.



MAP

OF
160 ACRES APPLICATION No 42
SURVEY MADE FOR F.J. DEMERRITT
HARRIS COUNTY, TEXAS.

SCALE 1 inch = 200 feet or 72 varas.

OFFICE OF:
GEO. F. HORTON, C^o SURV.
HARRIS C^o TEXAS, JUNE 6th 1908



Arb 726 R.S 1895

19.3

Spiegelau Dec 6/24/08.
Hon J J Turrell
Austin Tex

Dear Sir:

Complying with your verbal request I herein enclose Judge Lock M^r Daniel's Brief for Mr F. J. De. Meritt. I also enclose Mr McGugin's letter in regard to the California law.

Kindly give the matter your attention & oblige

Yours Truly
A N Kirby

H. F. MACGREGOR
704 MAIN STREET
ROOMS 206 AND 207 LEVY BUILDING
HOUSTON, TEXAS

Houston, Texas, June 20th, 1908.

Mr. R. H. Kirby,

Austin, Texas.

Dear Sir:

I enclose brief prepared by Judge Lock
McDaniel which please present to the Land Commissioners.

The brief impresses me with the idea that the law considers submerged land as land which the Atty. General Hawkins was in some doubt about. They have already issued patents as referred to in the brief and have treated it as land and it seems to me there should not be any question about it being public domain and that the mining laws cover same. Under the authorization of channel and dock companies the legislature has considered overflowed land as being of nominal value, as one of the provisions provide for the sale of the land at \$2.00 per acre and another one a free use of the land where improved for dock and channel purposes. There has been a recent sale of land since the drilling commenced adjoining the land on which drilling is in progress at \$16.00 per acre. This is good tillable land and it seems to me the minimum price of \$15.00 under the mining law would be a very full price for the land we wish to purchase as it will be practically a gamble as to whether oil or gas can be found under it or not. If it is not found we will not only have the expense of drilling but the land will be practically unsaleable for ordinary purposes.

We were unable to obtain the desired information about the California law relative to drilling in the Pacific ocean.

Yours truly,

H. F. MacGregor

See Chap. 15 R.S.
1895-p-182
also Title
1895-p-102
m.

Atty General
opinion - by
Culbertson
July 12/1899
Note his reference to
former opinion March
13th - 1891

THE RIGHT AND DUTY OF THE COMMISSIONER OF THE GENERAL LAND OFFICE
OF TEXAS TO SELL, UPON APPLICATION, SUBMERGED LANDS IN THE LAKES,
BAYS AND THE ISLANDS ALONG THE COAST OF THE GULF OF MEXICO.

The Congress of the Republic of Texas and the Legislature of the State of Texas since annexation, in dealing with the public domain, have always made a distinction between the lands which by direction of the constitution were set aside and appropriated for special purposes and special funds, and the public lands which belonged to the State for such disposition for the benefit of the State as the Legislature, in its wisdom, might see fit to make, denominating the several different characters of land as "Public Free School", "University", "Asylum" and "Public Lands". The instances in which this language and these distinguishing terms have been used are so universal that it is unnecessary to give instances of their employment in order to show that the words "public Lands" indicate a different character of lands from the others above mentioned, it being understood that those which have been appropriated for special purposes are entirely different from those known and denominated "public lands", for the sale and disposition of which numerous provisions have been made; that the latter is unappropriated and belongs to the State for such disposition as the State, through its law-making branch, may determine and provide for.

The Act of February 23, 1900, Sec. 1 Chapt. 1A Title 87 Supp. Sayles Stats., page 422, which was enacted "for the purpose of adjusting and finally settling the controversy between the permanent school fund and the State of Texas, growing out of the division of the public domain, set apart for the school fund 4,444,196 acres, and all of the unappropriated public domain remaining in the State of Texas of whatever character and wheresoever located, except that included in lakes, bays and the islands along the Gulf of Mexico within tide water limits, whether the same be more or less than said 4,444,195 acres; provided, this act shall not have the effect to transfer to the school fund any of the lakes, bays and the islands on the Gulf of Mexico within tide water limits, whether surveyed or

unsurveyed". The language in this act clearly shows that the Legislature regarded the submerged lands in the lakes, bays and the islands on the Gulf of Mexico within tide water limits as land subject to disposition by the Legislature as any of the balance of the body of the public domain; and that the same were kept out of the appropriation for the settlement of the controversy above referred to by a special proviso; otherwise they would have been public free school lands to be sold and disposed of just as other lands which had been appropriated for that purpose, but having been excepted by that proviso those submerged lands and islands became a part of the unsurveyed public domain of the State of Texas.

As a further argument in favor of our contention that the law-making branch of the Government of Texas has all along regarded and treated lakes and bays and the islands on the coast of the Gulf of Mexico within tide water limits as land, I wish here to call the attention of the Commissioner to Patent No. 633, Vol. 32, issued on the 6th day of December, 1880, conveying such land in Galveston County, in which patent the area conveyed is alternately called "sub-marine land and land", and states that it is entirely covered with water to the dept of from four to five feet; also to Patent No. 487, Vol. 36, issued on the 7th day of January 1887, conveying similar land, both ^{tracts} by virtue of Sec. 16, Article 34 of the Constitution and Article 372 (new number) and 331 (old number) Revised Statutes of Texas, being the Act of February 13, 1854.

The only provision made by law for the sale of such lands is found in Title 71, comprising the Acts of 1889 and 1895, and embraces Articles 3481 to 3498t, inclusive, of Sayles Annotated Statutes of 1897, Vol. II, page 1286, and is entitled "An Act to better and more fully promote the development of the mining resources of Texas, and to repeal all laws in conflict with the provisions of this Act". This Act was passed with the emergency clause which reads as follows: "The mining interests of the State are great and important, and there are no general laws free from doubt and uncertainty regulating in an adequate, general and just manner the mining interests of the whole state; therefore, etc."

These two Acts-- that of 1889 and 1895-- are almost

See under Const. Art 16 Sec 34
& R.S. 331

identical in terms and provisions, there being in the latter Act some very slight change of verbage only from that of the former. For that reason, in attempting to show the Commissioner that this Act provides for the sale of submerged land as above mentioned, I shall call his attention to and quote from the Articles of the law embraced in the latter Act- 1895-, it being the general supposition that that Act superseded the Act of 1889.

"Art. 3498a. Reserved lands opened to exploration and purchase, etc.

All public school, university, aslyum and public lands specially included under the operation of this title, all the lands now owned by the state situated within the reservation known as the "Pacific Reservation", which were taken off the market and reserved from sale by an Act approved January 22, 1883, containing valuable mineral deposits, are hereby reserved from sale or other disposition, except as herein provided, and are declared free and open to exploration and purchase under regulations prescribed by law, by citizens of the United States and those who have declared their intention of becoming such; provided, that all who have located and recorded valid claims under previous valid laws and have not abandoned same, but are engaged in developing same, shall have a prior preference right for ninety days after the passage of this title in which to relocate same under this title. (Act 1895, p. 197.)"

The foregoing article shows what land the Commissioner may sell for mining purposes, and our contention is that the use after "public school, university and aslyum" of the words "and public lands" brings the submerged land within the list of lands by said Act authorized to be sold.

My associates and myself relying upon that law have made application to buy submerged lands in Harris County, Texas, along the eastern or north-eastern shore of San Jacinto Bay as public land perhaps containing oil and natural gas under Article 3498j, which article gives any person or association of persons qualified as required by Article 3498a the right to purchase and obtain patents by complying with said Title 71 on any of the lands of the state which are specified or included in Article 3498a, containing valuable deposits of kaolin, baryta, salt, marble, fire-clay, iron ore, coal, oil, natural gas, gypsum, nitrates, mineral paint, asbestos, marl, natural cement, clay, onyx, mica, precious stones or any other non-metallic minerals and stones valuable for ornamental or building purposes, or other valuable building material, in legal subdivisions in quantity not exceeding one section; etc. And provides how said purchase may be accomplished.

In this connection I beg to call the attention of the Commissioner again to the following provision in said Article 3498a. From the language used it cannot be construed otherwise than as placing all mineral bearing lands on the market under Title 71 aforesaid, the language being as follows; "are hereby reserved from sale or other disposition, except as herein provided, and are declared free and open to exploration and purchase under regulations prescribed by law, (that is, by the provisions of Title 71)."

Also the following language contained in said Article 3498j under which our applications are made. ".....and all said lands are reserved from sale or other disposition than under this Title....." The use of the words "than under this Title" clearly establishes the fact that the Legislature intended by this Act to provide a means for the sale by the Commissioner of all public lands containing mineral deposits, including oil and natural gas.

We have posted our claims as required by Article 3498d and have applied for and caused to be made surveys of the claims as required by Article 3498f and Article 3498j. We located and posted our claims under 3498e, and applied for and caused surveys to be made under 3498f as a matter of precaution-- that is, to make assurance doubly sure, and not but what we believe that we could have rested our rights to become purchasers of the lands solely upon the provisions so far as location and surveys are concerned on Article 3498j.

While it is true that Article 3498b directs the Commissioner of the General Land Office to make maps showing the location of all public school, university, asylum and public lands which were unsold at the date of the passage of said Act, it nowhere appears in the title that he cannot and shall not make sales of lands under the provisions of said title before it has been practicable for him to have made such maps.

From the foregoing I am convinced that my associates and myself have the right to demand of the Commissioner to close up the sale of the lands applied for by us and each of us on said San Jacinto Bay in Harris County, Texas, and to grant us patents therefor upon

the payment of the balance of the purchase price.

In passing upon this matter and the priority of rights, we beg That you consider my letters to the Commissioner of the General Land Office dated April 28, 1908, and May 6, 1908, respectively, as part and parcel of our application to become the purchasers of the land described in our several formal applications made.

Very respectfully,

Lock M. Daniel

5
File No 8599-

Harris County
Submerged Land-

T. J. Demeritt

Brief by title

Filed June 25/1908
John J. Farrell
Covir.

6/25/1908

S.H.G.

ATTORNEY GENERAL'S DEPARTMENT.

Austin, Texas, August 6, 1908.

Hon. John J. Terrell,

Commissioner of the General Land Office,

Austin, T e x a s.

Sir:

26224
We have received and carefully considered your recent inquiry as to your rights, powers and duties with regard to sale of submerged lands under the shallow waters of San Jacinto Bay in Harris County, and elsewhere.

The question arises upon applications to purchase such lands filed under Revised Statutes, Title 71, the contention of the applicants being that said lands are oil and gas bearing lands and therefore subject to sale by you under the statutes providing for the sale of mineral lands.

The question thus presented is one of considerable importance, as it involves your right to sell all submerged lands under the shallow waters of all lakes and bays within this State and along the gulf coast.

It will be remembered that by an act entitled "An Act to define the boundaries of the Republic of Texas", and approved December 19, 1836, (1 Gam., 1193, bot.), the first Congress of Texas declared "that from and after the passage of this Act, the civil and political jurisdiction of this Republic be, and is hereby declared to extend to the following boundaries, to-wit: beginning at the mouth of the Sabine river, and running West along the Gulf of Mexico three leagues from land, to the mouth of the Rio Grande", etc.

And after annexation the Legislature of Texas re-affirmed its "exclusive right to the jurisdiction over the soil included

0

24/2

ATTORNEY GENERAL'S DEPARTMENT.

Austin, Texas, August 6, 1902.

Hon. John L. Terrill,

Commissioner of the General Land Office,

Austin, Texas.

Sir:

58599

We have received and carefully considered your recent inquiry as to your rights, powers and duties with regard to sale of submerged lands under the shallow waters of San Jacinto Bay in Harris County, and elsewhere.

The question arises upon applications to purchase such lands filed under Revised Statutes, Article VI, the contention of the applicants being that said lands are oil and gas bearing lands and therefore subject to sale by you under the statutes providing for the sale of mineral lands.

The question thus presented is one of considerable importance, as it involves your right to sell all submerged lands under the shallow waters of all lakes and bays within this State and along the Gulf coast.

It will be remembered that by an act entitled "An Act to define the boundaries of the Republic of Texas," and approved December 30, 1858, (1 Stat., 1193, 1195, 1196, 1197, 1198, 1199, 1200, 1201, 1202, 1203, 1204, 1205, 1206, 1207, 1208, 1209, 1210, 1211, 1212, 1213, 1214, 1215, 1216, 1217, 1218, 1219, 1220, 1221, 1222, 1223, 1224, 1225, 1226, 1227, 1228, 1229, 1230, 1231, 1232, 1233, 1234, 1235, 1236, 1237, 1238, 1239, 1240, 1241, 1242, 1243, 1244, 1245, 1246, 1247, 1248, 1249, 1250, 1251, 1252, 1253, 1254, 1255, 1256, 1257, 1258, 1259, 1260, 1261, 1262, 1263, 1264, 1265, 1266, 1267, 1268, 1269, 1270, 1271, 1272, 1273, 1274, 1275, 1276, 1277, 1278, 1279, 1280, 1281, 1282, 1283, 1284, 1285, 1286, 1287, 1288, 1289, 1290, 1291, 1292, 1293, 1294, 1295, 1296, 1297, 1298, 1299, 1300, 1301, 1302, 1303, 1304, 1305, 1306, 1307, 1308, 1309, 1310, 1311, 1312, 1313, 1314, 1315, 1316, 1317, 1318, 1319, 1320, 1321, 1322, 1323, 1324, 1325, 1326, 1327, 1328, 1329, 1330, 1331, 1332, 1333, 1334, 1335, 1336, 1337, 1338, 1339, 1340, 1341, 1342, 1343, 1344, 1345, 1346, 1347, 1348, 1349, 1350, 1351, 1352, 1353, 1354, 1355, 1356, 1357, 1358, 1359, 1360, 1361, 1362, 1363, 1364, 1365, 1366, 1367, 1368, 1369, 1370, 1371, 1372, 1373, 1374, 1375, 1376, 1377, 1378, 1379, 1380, 1381, 1382, 1383, 1384, 1385, 1386, 1387, 1388, 1389, 1390, 1391, 1392, 1393, 1394, 1395, 1396, 1397, 1398, 1399, 1400, 1401, 1402, 1403, 1404, 1405, 1406, 1407, 1408, 1409, 1410, 1411, 1412, 1413, 1414, 1415, 1416, 1417, 1418, 1419, 1420, 1421, 1422, 1423, 1424, 1425, 1426, 1427, 1428, 1429, 1430, 1431, 1432, 1433, 1434, 1435, 1436, 1437, 1438, 1439, 1440, 1441, 1442, 1443, 1444, 1445, 1446, 1447, 1448, 1449, 1450, 1451, 1452, 1453, 1454, 1455, 1456, 1457, 1458, 1459, 1460, 1461, 1462, 1463, 1464, 1465, 1466, 1467, 1468, 1469, 1470, 1471, 1472, 1473, 1474, 1475, 1476, 1477, 1478, 1479, 1480, 1481, 1482, 1483, 1484, 1485, 1486, 1487, 1488, 1489, 1490, 1491, 1492, 1493, 1494, 1495, 1496, 1497, 1498, 1499, 1500, 1501, 1502, 1503, 1504, 1505, 1506, 1507, 1508, 1509, 1510, 1511, 1512, 1513, 1514, 1515, 1516, 1517, 1518, 1519, 1520, 1521, 1522, 1523, 1524, 1525, 1526, 1527, 1528, 1529, 1530, 1531, 1532, 1533, 1534, 1535, 1536, 1537, 1538, 1539, 1540, 1541, 1542, 1543, 1544, 1545, 1546, 1547, 1548, 1549, 1550, 1551, 1552, 1553, 1554, 1555, 1556, 1557, 1558, 1559, 1560, 1561, 1562, 1563, 1564, 1565, 1566, 1567, 1568, 1569, 1570, 1571, 1572, 1573, 1574, 1575, 1576, 1577, 1578, 1579, 1580, 1581, 1582, 1583, 1584, 1585, 1586, 1587, 1588, 1589, 1590, 1591, 1592, 1593, 1594, 1595, 1596, 1597, 1598, 1599, 1600, 1601, 1602, 1603, 1604, 1605, 1606, 1607, 1608, 1609, 1610, 1611, 1612, 1613, 1614, 1615, 1616, 1617, 1618, 1619, 1620, 1621, 1622, 1623, 1624, 1625, 1626, 1627, 1628, 1629, 1630, 1631, 1632, 1633, 1634, 1635, 1636, 1637, 1638, 1639, 1640, 1641, 1642, 1643, 1644, 1645, 1646, 1647, 1648, 1649, 1650, 1651, 1652, 1653, 1654, 1655, 1656, 1657, 1658, 1659, 1660, 1661, 1662, 1663, 1664, 1665, 1666, 1667, 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in the limits of the late Republic of Texas", excepting such as may be vested in the United States, by the Constitution of the United States, and by the joint resolution of annexation. (Hart. Dig. Arts. 1831 and 1834.)

It will also be remembered that by the terms of the Act of February 23, 1900, defining the permanent school fund of the State of Texas, partitioning the public land between said fund and the State and adjusting the account between said fund and the State and setting apart and appropriating to said school fund in part payment of said account the residue of the public domain of the State to which said fund was entitled under Section 2, Article 7 of the Constitution of 1876, it was expressly declared that "this Act shall not have the effect to transfer to the school fund any of the lakes, bays and islands on the Gulf of Mexico within tide water limits, whether surveyed or unsurveyed."

I think it is clear that under the usage of nations and the rules of the common law and the above mentioned legislative enactments all such submerged lands, whether in lakes or bays or along the gulf coast, were claimed by and reserved to and are now owned and held by the State of Texas subject to such disposition as may now or as may ~~be~~ ^{be} hereafter authorized and directed by the Constitution and laws of the State of Texas, subject, of course, to the exercise by the United States Government of the constitutional powers relative to navigation and commerce.

But do the laws of this State now in force, and especially those found in Revised Statutes, Title 71, and amendments thereof, upon the subjects of mines and mining, authorize you to sell such submerged lands or any part thereof?

I think not.

I think a careful reading of our statutes relating to the sale of public lands, ~~and~~ especially including those found in Revised Statutes, Title 71, will impress any reasonable mind with

in the limits of the late Republic of Texas," excepting such as may be vested in the United States, by the Constitution of the United States, and by the joint resolution of annexation. (Hart. Dig. Arts. 1881 and 1884.)

It will also be remembered that by the terms of the Act of February 22, 1860, defining the permanent school fund of the State of Texas, partitioning the public land between said fund and the State and adjusting the account between said fund and the State and setting apart and appropriating to said school fund in part payment of said account the residue of the public domain of the State to which said fund was entitled under Section 2, Article V of the Constitution of 1876, it

was expressly declared that "this Act shall not have the effect to transfer to the school fund any of the lakes, bays and islands on the Gulf of Mexico within tide water limits, whether surveyed or unsurveyed."

I think it is clear that under the usage of nations and the rules of the common law and the above mentioned legislative enactments all such submerged lands, whether in lakes or bays or along the Gulf coast, were claimed by and reserved to and are now owned and held by the State of Texas subject to such disposition as may now or as may hereafter be authorized and directed by the Constitution and laws of the State of Texas, subject, of course, to the exercise by the United States Government of the constitutional powers relative to navigation and commerce.

But as the laws of this State are in force, and especially by those found in Revised Statutes, Title VI, and amendments thereof, upon the subjects of mines and mining, authorize you to sell such submerged lands or any part thereof?

I think not.

I think a careful reading of our statutes relating to the sale of public lands, especially including those found in Revised Statutes, Title VI, will impress any reasonable mind with

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the idea that they were not intended by the Legislature to be applicable to such submerged lands, even though it should be conceded that the phraseology employed therein is sufficiently broad and comprehensive when read and construed literally to embrace such submerged lands.

Our Supreme Court has held in effect that the laws of this State providing for the sale of public lands should be construed in the light of the surroundings and history of the times in which they were enacted and with due regard to all other legislation concerning the public domain, all with a view of giving effect to the legislative purpose, rather than to adhere rigidly to the particular phraseology employed in a given statute.

And in the case of Roberts vs. Terrell, Commissioner, that court recently held that Mustang Island was not within the operation and scope of the general statutes providing for sale of public lands, and that, consequently, an attempted location upon that island of a certificate which had been granted by the Legislature to William A.A. (Big Foot) Wallace was invalid.

See, also State v. Delesdenier, 7 Tex., 76; Franklin v. Tiernan, 56 Tex., 624.

The uniform practice of the Legislature in dealing with the islands along the gulf coast has been to do so by specific legislation.

The First Congress of the Republic granted by Act of December 9, 1836, to Michael B. Menard and his associates, a league and labor of land lying and situate on and including the East end of Galveston Island. (1 Gam., 1131, bot.)

By Act approved June 12, 1837, the Congress made special provision for the disposition by the Secretary of the Treasury by sale at public ~~ex~~ auction of the Island of Galveston, except the league and labor sold to M.B. Menard and associates, and all other islands within the Republic, in lots of not less than ten nor more than forty acres. (1 Gam., 1127, bot.)

Or

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East end of Galveston Island. (1 Gam., 1131, 1132.)

By Act approved June 12, 1837, the Congress made special provision for the disposition by the Secretary of the Treasury by sale at public auction of the Island of Galveston, except the league and labor sold to M.B. Howard and associates, and all other lands within the Republic in lots of not less than ten nor more than forty acres. (1 Gam., 1137, 1138.)

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The 30th Legislature, in Chapter 122 of the General Laws of 1907, page 320, made special provision for the sale of lands constituting portions of the public domain and situated upon Mustang Island, the plan of sale being widely different in many respects from that prescribed by the general statute authorizing sale of public lands.

Other instances might be given, but these will suffice to show that it is the general policy of the Legislature to specially treat the disposition of lands on islands along the coast. I am firmly convinced that the Legislature would have likewise made special provision for the sale of submerged lands in lakes and bays and along the gulf coast had it intended that any of such lands should be sold or otherwise disposed of by the Commissioner of the General Land Office.

Indeed, such special provisions have been made for disposition of such lands, under certain conditions, to channel and dock corporations, and to deep water corporations. (Revised Statutes, Title 21, Chapters 14 and 15).

I am strongly persuaded that in a matter so fraught with public interest as is the disposition of such submerged lands in lakes and bays and along the gulf coast, the Legislature would have unquestionably maintained its settled policy of enacting laws specifically dealing with that subject matter, had it intended to place such submerged lands on the market for sale.

I am of the opinion that in the absence of such legislation you should decline to sell such lands, leaving it for the Legislature to deal with the subject by appropriate legislation.

Another view of the matter which strengthens my conclusion is that it has always been the settled policy of our State Government to hold the lakes and bays and the shallow waters along the gulf coast, in trust, as it were, for the public, rather than to permit them to be appropriated to private ownership.

Indeed, that has been the policy of practically all civilized governments, from time immemorial. (City of Galveston

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Indeed, such special provisions have been made for disposition of such lands, under certain conditions, to channel and dock corporations, and to deep water corporations. (Revised Statutes, Title 81, Chapters 14 and 15.)

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Indeed, that has been the policy of practically all civilized governments, from the immortal City of Babylon

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vs. Menard, 23, Tex., 349.)

As was well said by Judge Roberts in City of Galveston

vs. Menard, 23 Tex., 395-6:

"By the civil law, the shores of the sea, of bays, and navigable streams generally, as well as the tide-waters, were jealously guarded from private appropriation, and reserved for common use. As early as 1837, congress in establishing a general land office, for the distribution and disposition of lands, enacted "that all streams, of the average width of thirty feet, shall be considered navigable streams," and "shall not be crossed by lines of a survey." Hart. Dig. art. 1878. The same act made provision for diminishing the front line of tracts, surveyed on navigable streams, indicating an anticipated advantage in the use of such streams for navigation. Art. 1858."

It may be added that both of these statutes, in substantially the same form, are in force to-day.

It is obvious that if you recognize the right of applicants to purchase such submerged lands under existing laws, and award such lands to such applicants, the erection of derricks and other structures thereon may seriously and permanently obstruct navigation and may materially impair or interfere with the rights of owners of lands heretofore sold by the State fronting on such lakes, bays and gulf..

In the able brief submitted by Judge Lock McDaniel in behalf of the applicants, two patents are mentioned as furnishing precedents for you to award submerged lands under the above mentioned applications. The first of these patents, No. 487, Volume 36, dated January 7, 1887, and signed by Governor John Ireland, was for a lot of land measuring 300 by 1100 feet "in Galveston County on the Eastern end of Galveston Island".

The second of these patents, No. 633, Volume 32, dated December 6, 1888, was signed by Governor O.M. Roberts and was for "a certain circular tract of sub-marine land, having a radius of 372 feet, in Galveston County".

Each of these patents shows upon its face that it was issued in accordance with the provisions of Section 34 of Article 16 of the Constitution of Texas and Article 331 of Revised Statutes, the numbers of the section and article of the Constitution being transposed, however, ~~****~~ said Patent No. 487.

In other words, these two tracts of land were patented to the United States Government for military purposes under constitutional and statutory provisions authorizing a sale of the public lands to the United States for that purpose.

It will be noted that said Patent No. 633 was signed by the great jurist who wrote the exhaustive and learned opinion of the court in the City of Galveston vs. Menard, supra.

Whether the grants of lands evidenced by these two patents were authorized by then existing laws or not, it will be noted that the purposes and effect of said grants were very different from what would be the probable and necessary purpose and effect of sales by you of such submerged lands to individuals. I do not consider the cases cited as precedents in the case here under consideration, nor do I think that even though they were strictly in point, such precedents should control your action in the premises.

Upon the whole I am of the opinion that a fair construction of existing laws and public policy alike require that you shall decline to sell any such submerged lands until there shall have been further legislation specifically authorizing you to do so, or until the Supreme Court of this State shall have held that it is your duty to do so under existing laws.

Truly yours,

W. E. Hawkins
Office Assistant Attorney General.

WEH-m

MEMO

Office Assistant Attorney General.

W. F. H. Jones.
Truly Yours,

have held that it is your duty to do so under existing laws.
The you to do so, or until the Supreme Court of this State shall
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It will be noted that said Patent No. 938 was signed

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County.

School Land.

J. J. De Mott

Atty Gen Opinion

Filed 8-6-1908

John J. Perrier

Comm'r

W. L. Coleman

Clerk

8/6/1908



General Land Office.

State of Texas.

Austin.

August 8, 1908.

JOHN J. TERRELL, COMMISSIONER.
J. T. ROBISON, CHIEF CLERK.

Mr. R. H. Kirby,

Austin, Texas.

Dear Sir:

In the matter of F. J. DeMerritt for a survey of submerged land in San Jacinto bay under the mineral statute, beg to say the same is "rejected because application is insufficient and the Attorney General advises submerged land not subject to sale, otherwise correct." The point wherein the application is deemed insufficient is this: The oath says "I solemnly swear that I desire said land surveyed with the intention of buying it, and that I am not acting in collusion with, or attempting to acquire said land for any other person or corporation." In the face of that affidavit Mr. DeMerritt signs F. J. DeMerritt for himself and for his associates, manifestly making a contradiction between his affidavit and the capacity in which he signs his name. Should the parties at interest desire to bring a mandamus, they can allege that the affidavit is sufficient, that the field notes are correct, and that the land is subject to sale, and ask that the Commissioner be compelled to accept the application and award the land. If they will shape it that way they would not need copies of any papers to be attached, nor would this department raise any question of fact as the field notes have been approved.

Yours truly,

S.F.8599

Commissioner.

Robison-E

General Land Office

State of Texas



August 8, 1908.

Austin

JOHN L. TERRELL, COMMISSIONER
J. V. MORRISON, CHIEF CLERK

Mr. R. H. Kirby,

Austin, Texas.

Dear Sir:

In the matter of V. J. DeMerritt for a survey of submerged land in San Jacinto Bay under the mineral statute, be to say the same is "rejected because application is insufficient and the Attorney General advises submerged land not subject to sale, otherwise correct." The point wherein the application is deemed insufficient is this: The oath says "I solemnly swear that I desire said land surveyed with the intention of buying it, and that I am not acting in collusion with, or attempting to acquire said land for any other person or corporation." In the face of that affidavit Mr. DeMerritt signs V. J. DeMerritt for himself and for his associates, manifestly making a contradiction between his affidavit and the capacity in which he signs his name. Should the parties at interest desire to bring a mandamus, they can always have the affidavit corrected, and the application notes are correct, and that the land is subject to sale, and ask that the Commissioner be compelled to accept the application and award the land. If they will shape it that way they would not need copies of any papers to be attached, nor would this department raise any question of fact as the field notes have been approved.

Yours truly,

Commissioner.

E. W. 8599

Replied to

6558-55
⑦